

## Liabilities on Trails

The District can implement the Trails Master Plan, in part, by requiring developers and landowners to include trails internal to and connecting through the developer's property as part of the development review process. Developers and owners of undeveloped property adjacent to trail development have voiced concerns about landowners' liability. No activity is entirely free from exposure to liability, but the dedication, construction, and operation of public trails can be at the low end of the landowner liability spectrum.

To address liability concerns, Utah has adopted the Landowner's Liability Act, which states:

*"The purpose of this Act is to encourage public and private owners of land to make land and water areas available to the public for recreational purposes by limiting their liability toward persons entering thereon for those purposes. The Act further provides that the owner of the land owes no duty of care to keep the premises safe for entry or use by any person using the premises for any recreational purpose or to give any warning of a dangerous condition, use structure or activity on those premises to those persons."*

The Act provides further protection for landowners, including limitations on representations as to the safety of the premises, limitations on the duty of care owed to visitors and limitations on liability for injuries caused the acts of visitors while on the premises.

The Utah Landowner Liability Act was construed by the Utah Supreme Court in Crawford v. Tilley, 780 P.2d 1248 (1989). The court found the landowner not to be protected by the Utah Act because the premises on which the injuries occurred were not open to the public and were, in fact, posted "No Trespassing."

An annotation in American Law Reports suggests that counsel representing a landowner should consider, in advance of any litigation, the nature and number of warning signs that the landowner could place on his property to best take advantage of the protection from liability afforded by a recreational use statute. The annotation also suggests that counsel should advise his client to post signs that warn of the danger, but not to bar entry, such as advising entering "At Your Own Risk" (47 A.L.R. 4<sup>th</sup> 262).

### Summit County Biking and Hiking Regulations Ordinance

In addition to the Utah Landowner Liability Act, the Summit County Commission has adopted an ordinance to regulate biking and hiking on designated trails in Summit County. The Ordinance No. 196 follows:

**"WHEREAS**, the Summit County Commission recognizes the landowners within Summit County who make their land or designated portions thereof available for public transportation or recreational purposes and afford themselves the liability protection contemplated by the Utah Landowner Liability Act (UCA 57-14-1, etseq.) and;

**WHEREAS**, the Summit County Commission encourages development of designated trails within the County and wishes to regulated the use of said trails in a manner which will safeguard and promote the health, safety, and welfare of trail users and landowners who directly or indirectly permit public use of their land for transportation or recreational purposes;

### **NOW, THEREFORE, BE IT ORDAINED BY BOARD OF COMMISSIONERS OF SUMMIT COUNTY, UTAH:**

**Section 1.** It shall be unlawful for any person, for the purpose of biking, hiking, or other transportation or recreational activity, to willfully go upon any land area designated and posted unsafe or closed by landowner, County Sheriff, Forest Service or National Park Service.

**Section 2.** "Posted," as used in this Ordinance, means:

- (a) any proposal communication by the landowner, representative of the owner, the Sheriff, the Forest Service, or National Park Service, or,
- (b) fencing or other enclosures or barriers obviously designed to prevent unintentional access to an area; or,
- (c) posting of signs reasonably likely to come to the attention of persons engaged in transportation or recreational activity to willfully leave the boundaries of any designated public trail across privately owned lands without the consent of the landowner.

**Section 3.** It shall be unlawful for any person for the purpose of biking, hiking, or other transportation or recreational activity to willfully leave the boundaries of any designated public trail across privately owned lands without the consent of the landowner.

**Section 4.** Any person violating the provisions of this Ordinance shall be guilty of a Class C Misdemeanor, and be punished by a fine not to exceed \$750.00 and/or confinement in the City Jail for not more than ninety days.

**ADOPTED AND PASSED** by the Summit County Commission this 28<sup>th</sup> day of January, 1992.”

There are a variety of solutions to the liability concerns raised by private landowners when asked to allow public access on their properties for transportation or recreation purposes. The first, of course, is reliance on the applicable landowners’ liability statute and posting or appropriate warning signs. Another alternative includes the leasing of trail areas to the city or other governmental entity desiring public use. The more traditional method would be to convey or dedicate the trail to the City or other governmental entity in fee for title, thereby removing any status liability of the former landowner.

This is not to suggest that construction and operation of a public trail system is without liability at all, but such activities probably expose landowners and sponsoring governmental agencies to lower levels of liability for damage claims than most other activities. In fact, attempts by landowners to prevent public access to their properties may remove the protection offered by the Utah Landowners Liability Act.

### **Utah Liability Issues**

(Produced by Fabian & Clendenin, Salt Lake City, Utah)

#### **I. PRIVATE LANDOWNERS**

##### **A. COMMON LAW LIABILITY**

Depends on user’s status

Trespasser (property posted or fenced)

No duty to warn; no duty to protect; liability only for malicious injury

Licensee (allowed on property but not invited)

Duty to warn of known dangers; no duty to protect

Invitee (business patron or social guest invited on property)

Under common law owners are driven to post property and vigorously enforce against trespass in order to get the highest level of protection

##### **B. STATUTORY PROTECTION-LIMITATION ON LANDOWNER LIABILITY ACT (U.C.A. 57-14-1)**

Purpose is to encourage owners to allow public access to private land

Applies only where:

use is recreational

landowner does not charge for use

property is open to general public

Landowner’s liability to all users under statute is same as to trespassers under common law

##### **C. TRAIL CONSIDERATIONS**

Owner of adjoining property (but not trail corridor)

No liability for accidents on trail

For accidents on adjoining private property:  
if property is closed to public use, common law will apply  
if property is open, statute will apply  
in either case, liability is only the malicious injury  
Where trail corridor is privately owned, subject to an easement granting a public right of way,  
liability picture is not as clear.

Does selling an easement constitute a “charge” for public access? If so, statute may not apply  
and liability would be a license or invitee

In 1997 statute was amended to specifically cover cooperative wildlife management units  
(where hunter buys permit from state who remits a portion to participating landowner)

A similar amendment might be needed for trail easements

#### Posting Issues

Generally, property is considered open unless posted or enclosed

Some ordinances (e.g. Summit County) prohibit leaving public trails without adjoining owner’s  
expressed consent.

### **D. PUBLIC LANDOWNERS**

#### **a. SOVEREIGN IMMUNITY**

Government agencies are not liable for accidents unless immunity has been waived by statute  
Immunity has been waived for sidewalks, streets and other public “structures or improvements”- does this  
include trails?

#### **b. RECREATIONAL LAND USE IMMUNITY ACT (HB 107 1999)**

Restores immunity for injuries arising from the “inherent risks” of “recreational activities,” which  
expressly includes hiking, bike riding and equestrian activity

#### **c. LIMITATION ON LANDOWNER LIABILITY ACT**

Statute does not apply to urban parks, but may still apply to trails across undeveloped land. See, *De  
Baritault v. Salt Lake City*, 913 P.2d 743 (1996)